

EXHIBIT

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

STATE OF MISSOURI, et al.,

Plaintiffs,

v.

No. 4:21-cv-01300

JOSEPH R. BIDEN, JR., et al.,

Defendants.

DECLARATION OF ANDREW ARMACOST

1. My name is Dr. Andrew Armacost, and I am the President of the University of North Dakota. I am also a resident of North Dakota and over the age of majority. I have personal knowledge of the facts in this declaration, and those facts are true and correct to the best of my knowledge.

2. I submit this declaration to provide documentation for Plaintiffs' Motion for Preliminary Injunction.

3. The University of North Dakota (UND) Energy & Environmental Research Center (EERC) has entered into Indefinite Delivery, Indefinite Quantity Subcontract No. P010227025 with Leidos, Inc. (Leidos), to provide support for Leidos's work under Prime Contract No. 89243318CFE000003, that has been issued by United States Department of Energy National Energy Technology Laboratory (NETL).

The Subcontract's period of performance is from May 31, 2019, through December 30, 2023. In the two-and-a-half years since the contract was placed, Leidos has contracted with

UND to perform sixteen projects in the total amount of \$9,020,262. In the coming years, the EERC anticipates additional project collaborations with Leidos and NETL that would be valued at tens of millions of dollars.

On Monday, October 18, 2021, Leidos provided the EERC with a modification to include FAR 52.223-99 entitled “Ensuring Adequate Covid-19 Safety Protocols for Federal Contractors (Oct 2021) (Deviation)” as a mandatory flow-down clause. Leidos stated that this clause was mandated by the Federal Government as a result of Executive Order 14042 “Ensuring Adequate COVID Safety Protocols for Federal Contractors.” On Tuesday November 2, 2021, the EERC received a request from Leidos requesting a status update on whether the EERC would execute the required modification.

Should this contract be terminated, UND would lose approximately: 1. \$1,000,000 of currently authorized project funding; 2. \$800,000 of future incremental funding; and 3. multiple millions in anticipated future projects under this existing agreement. Should UND lose this funding, this would negatively impact energy research, development, and commercialization in North Dakota and the United States. In addition, multiple positions might need to be cut.

Should this contract be modified, UND would incur substantial financial expenses to administer, enforce, and create policies around a vaccine mandate for employees. It is also anticipated that UND will lose employees as a result of instituting a vaccine mandate, and may be faced with litigation by employees, making it difficult or impossible to carry out UND’s critical mission of developing critical research for North Dakota and the United States.

4. UND has entered into Indefinite Delivery, Indefinite Quantity Subcontract No. S-G30002-IDIQ-30-UND (Subcontract) with Applied Research Associates (ARA), for the

UND Research Institute for Autonomous Systems (RIAS) to provide support for ARA's work under Prime Contract No. GS00Q14OADU304, issued by United States General Services Administration (GSA).

The Subcontract's period of performance is from May 07, 2021, through September 29, 2025. On Wednesday, October 20, 2021, ARA provided UND with a new Task Order under the Subcontract, to include FAR 52.223-99 entitled "Ensuring Adequate Covid-19 Safety Protocols for Federal Contractors (Oct 2021) (Deviation)" as a mandatory inclusion. ARA stated that this clause was mandated by the Federal Government as a result of Executive Order 14042 "Ensuring Adequate COVID Safety Protocols for Federal Contractors." On Tuesday November 2, 2021, UND received a request from ARA requesting a status update on when UND would execute the new Task Order. On Tuesday, November 2, 2021, UND asked for clarification regarding the timeline expected for compliance with EO 14042.

Should UND be unable to accept and execute this Task Order, UND would lose approximately: 1. \$700,000 of currently authorized project funding; 2. \$1,100,000 of future incremental funding under this Task Order; and 3. multiple millions in anticipated future Task Orders under this Subcontract. Should UND lose this funding, this would negatively impact augmented reality research in North Dakota and the United States.

5. Moreover, UND holds over 125 additional active federally funded contracts and cooperative agreements valued at more than \$100,000,000 and outstanding proposals for federal contracts and cooperative agreements valued in excess of \$30 million. While UND has not yet received requests to modify these additional agreements, each would be subject to modification and/or the inclusion of FAR 52.223-99 in any renewals. UND is a global leader in energy, aviation, space, UAS/autonomy, medical, national security, big data and other

important research. The loss of these active contracts and cooperative agreements and associated state and private dollars would have devastating impacts on research and educational programs at UND and the economy and quality of life of the people of North Dakota.

Signing contracts that include FAR 52.223-99 as a result of Executive Order 14042, and flowing this requirement down to our subcontractors, will result in large, unplanned expenses to administer, enforce, and develop policies around a vaccine mandate at UND. In addition, these proposed contract modifications require that UND flows these requirements down to our subcontractors and ensure they do the same. It is possible that UND will face lawsuits from employees and subcontractors and lose the critical expertise of employees and subcontractors as a result of implementing these contracts with vaccine mandates. The loss of these employees and subcontractors will diminish UND's ability to develop cutting edge technologies and take away from UND's mission to provide transformative learning, discovery, and community engagement opportunities for tomorrow's leaders.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this the 4th day of November, 2021.



Andrew Armacost
President, University of North Dakota